

Application Serial No.: 09/722,050

Attorney Docket No. 089070-0311365 (23439-010)

In Response to Office Action mailed December 14, 2004

**AMENDMENTS TO THE DRAWINGS:**

- The nine (9) attached sheets of drawings in **APPENDIX A** replace the sheets depicting FIGS. 9, 12-18, and 23 that were filed with the formal drawings submitted on October 25, 2001.
- The nine (9) attached sheets of drawings in **APPENDIX B** are marked-up versions of the replacement sheets provided in **APPENDIX A**. These sheets are provided to highlight the corrections made in the replacement sheets provided in **APPENDIX A**.
- The changes made to FIGS. 9, 12-18, and 23 are described in the **Remarks/Arguments** section beginning on page 19 of this paper.

**APPENDIX A:** Replacement Sheets for FIGS. 9, 12-18, and 23.

**APPENDIX B:** Marked-up Versions of the Replacement Sheets for FIGS. 9, 12-18, and 23.

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### **REMARKS**

In response to the Office Action (Paper No. 13) mailed December 14, 2004, no claims have been amended, cancelled, or newly added. Therefore, claims 1-94 remain pending. In view of the following comments, allowance of all the claims pending in the application is respectfully requested.

### **INFORMATION DISCLOSURE STATEMENT (I.D.S.)**

1. An I.D.S. was filed by Applicant on May 2, 2001. To date, however, Applicant has not received a copy of the Form PTO-1449 signed by the Examiner indicating that this I.D.S. was considered. Accordingly, Applicant respectfully requests that the Examiner provide a signed copy of the Form PTO-1449 for this submission with the next Office Action.
2. Applicant is submitting herewith a Supplemental Information Disclosure Statement and respectfully requests that the Examiner provide a signed copy of the Form PTO-1449 for this submission with the next Office Action.

### **SPECIFICATION**

The Specification has been amended to update related application data.

### **DRAWINGS**

Applicant previously submitted a set of formal drawings on October 25, 2001. Subsequently, it was discovered that there were inadvertent errors and omissions in the formal drawings submitted for FIGS. 9, 12-18, and 23. As such, to ensure that these figures

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match the figures that were originally filed with the Specification, Applicant is submitting herewith nine (9) attached sheets of drawings in APPENDIX A that replace the sheets depicting FIGS. 9, 12-18, and 23 previously filed with the formal drawings submitted on October 25, 2001.

The nine (9) attached sheets of drawings in APPENDIX B are marked-up versions of the replacement sheets provided in APPENDIX A. These sheets are provided to highlight the corrections made in the replacement sheets provided in APPENDIX A.

Applicant submits that the changes to the drawing figures described above do not constitute the addition of new matter, as support for the instant corrections is provided throughout the as-filed Specification and the drawing figures as originally filed. Accordingly,

Applicant requests that the Examiner approve the changes to the drawing figures.

**REJECTIONS UNDER 35 U.S.C. § 112, SECOND PARAGRAPH**

Claims 1-94 stand rejected under 35 U.S.C. §112, second paragraph for allegedly failing to particularly point out and distinctly claim the subject matter which the applicant regards as his invention. *See* Paper No. 13, pg. 2, ¶'s 2-3.

With regard to claims 1 and 39, the Examiner alleges that the phrase "*to enable one or more users to view*" renders the claims indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention.

With regard to claims 6, 13, 20, 47, and 53, the Examiner alleges that the phrase "*for enabling*" renders the claims indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention.

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With regard to claims 35 and 39, the Examiner alleges that the phrase “*to enable*” renders the claims indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention.

With regard to claims 63, 64, 71-73, and 78, the Examiner alleges that the phrase “*further enabling*” renders the claims indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention.

Applicant traverses this rejection for at least the reason that the Examiner’s rejection is legally improper. The Examiner erroneously relies on MPEP §2173.05(d) as justification for the rejection. See Paper No. 13, pg. 2, ¶3. This section is not relevant to Applicant’s claims, however, as it addresses the use of exemplary or preferential claim language similar to “such as” and “for example.” Claims 1, 6, 13, 20, 35, 39, 47, 53, 63, 64, 71-73, and 78 do not include such language.

Moreover, the claim language following the phrases “*to enable one or more users to view*,” “*for enabling*,” “*to enable*,” and “*further enabling*” further describes various features and aspects of Applicant’s invention. The use of such phrases does not render Applicant’s claims indefinite, nor would the phrases prevent a person of ordinary skill in the art from interpreting the metes and bounds of the claims in which they are recited. Accordingly, this rejection is improper and should be withdrawn.

### REJECTIONS UNDER 35 U.S.C. §103

Claims 1-94 stand rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over U.S. Patent No. 6,064,984 to Ferguson *et al.* (“Ferguson”) in view of U.S. Patent No. 5,608,620 to Lundgren. See Paper No. 13, pg. 3, ¶5. Applicant traverses the rejection of

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claims 1-94 for at least the reason that the Examiner has failed to establish a *prima facie* case of obviousness.

A. Independent Claims 1 and 39.

Independent claims 1 and 39 are each directed to a graphical user interface for use with a computer-implemented system for viewing and analyzing performance data. Each claim recites that the graphical user interface comprises a performance view module to enable one or more users to view performance data of one or more contributors.

Independent claim 1 recites, *inter alia*, the feature(s) of “*wherein performance data is aggregated according to one or more user-defined criteria wherein one or more contributors’ performance in estimating earnings events are measured and compared.*” In the Office Action, the Examiner concedes that Ferguson fails to disclose this feature. The Examiner relies on Lundgren for this feature, however, alleging that the “*combination of the disclosures taken as a whole suggests that users would have benefited from being able to view performance data for various contributors and helped the users in their decision-making.*” This is legally improper. The Examiner’s recited motivation merely states what the alleged combination of the disclosures would suggest, or what “benefit” the combination of the disclosures would provide. In other words, the Examiner has focused on the “result” of the combination of Ferguson and Lundgren, but has not provided a legally proper teaching, suggestion, or motivation to combine the two references. For *at least* this reason, the Examiner has failed to establish a *prima facie* case of obviousness and, accordingly, the rejection of claim 1 is improper and should be withdrawn.

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Independent claim 39 recites, inter alia, the feature(s) of “*wherein performance data comprises accuracy measures which compare contributors’ forecasts and actual performances of one or more earnings events where the accuracy measures for each contributor are compared to other contributors participating in forecasting the earnings events.*” The Examiner does not appear to have addressed these claim features anywhere in the Office Action. To establish prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. In re Royka, 490 F.2d 981, 985, 180 U.S.P.Q. (BNA) 580 (C.C.P.A. 1974). “All words in a claim must be considered in judging the patentability of that claim against the prior art.” In re Wilson, 424 F.2d 1382, 1385, 165 U.S.P.Q. (BNA) 494, 496 (C.C.P.A. 1970). By failing to address *at least* the foregoing claim features, the Examiner has failed to establish a *prima facie* case of obviousness. For *at least* this reason, the rejection of claim 39 is improper and should be withdrawn.

For *at least* the reasons set forth above, the rejection of claims 1 and 39 is improper and should be withdrawn. Dependent claims 2-38 and 40-94 are allowable because they depend from allowable independent claims, as well as for the further limitations they contain.

B. Dependent Claims 2-38 and 40-94.

Applicant traverses the Examiner’s unsupported contention (*see* Paper No. 13, pg. 3) that the features of claims 2-38 and 40-94 are either taught by the combined disclosures of Ferguson and Lundgren, or are old and well known in the art.

The Examiner has failed to: (1) identify which claims are allegedly being rejected based on the disclosures of Ferguson and Lundgren; (2) identify where (in the disclosures of Ferguson and Lundgren) the claim features are allegedly disclosed; and (3) provide a

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teaching, suggestion, or motivation for combining or modifying the teachings of the references to arrive at Applicant's claimed invention. Obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. *In re Fine*, 837 F.2d 1071, 1074, 5 U.S.P.Q. 2d (BNA) 1596, 1598-99 (Fed. Cir. 1988).

The Examiner has further failed to identify those claims that are allegedly being rejected in view of Official Notice. The Examiner has also provided no evidence to support the contention that the features of any of claims 2-38 and 40-94 are old and well known in the context of a graphical user interface for use with a computer-implemented system for viewing

and analyzing performance data, as disclosed and claimed by Applicant.

Accordingly, having provided no evidentiary support for the rejection of any of dependent claims 2-38 and 40-94, the Examiner's rejection of these claims is improper and should be withdrawn.

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**CONCLUSION**

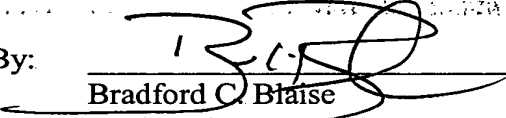
Having addressed each of the foregoing rejections, it is respectfully submitted that a full and complete response has been made to the outstanding Office Action and, as such, the application is in condition for allowance. Notice to that effect is respectfully requested.

If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

Date: June 13, 2005

Respectfully submitted,

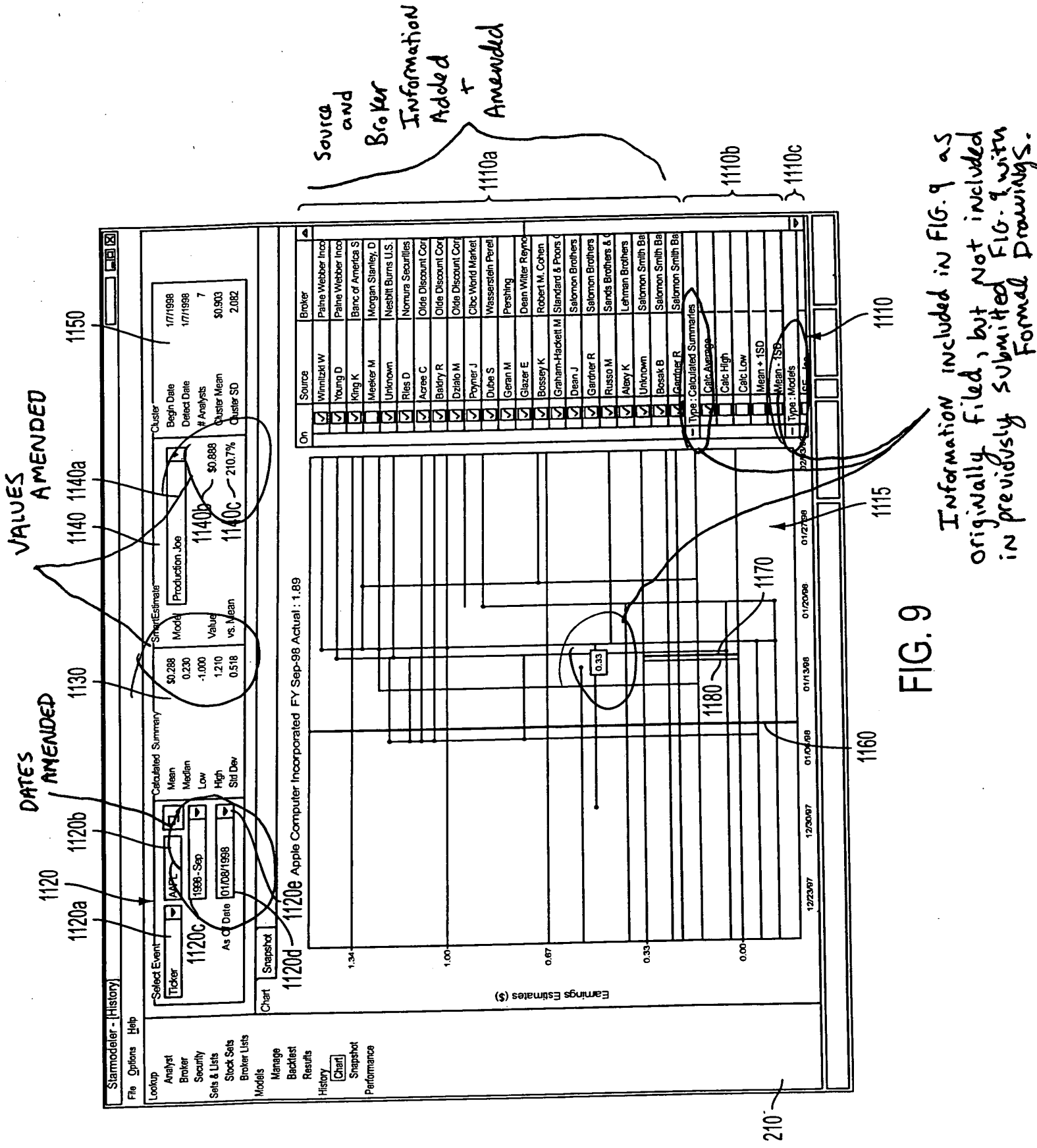
By:

  
Bradford C. Blaise  
Registration No. 47,429

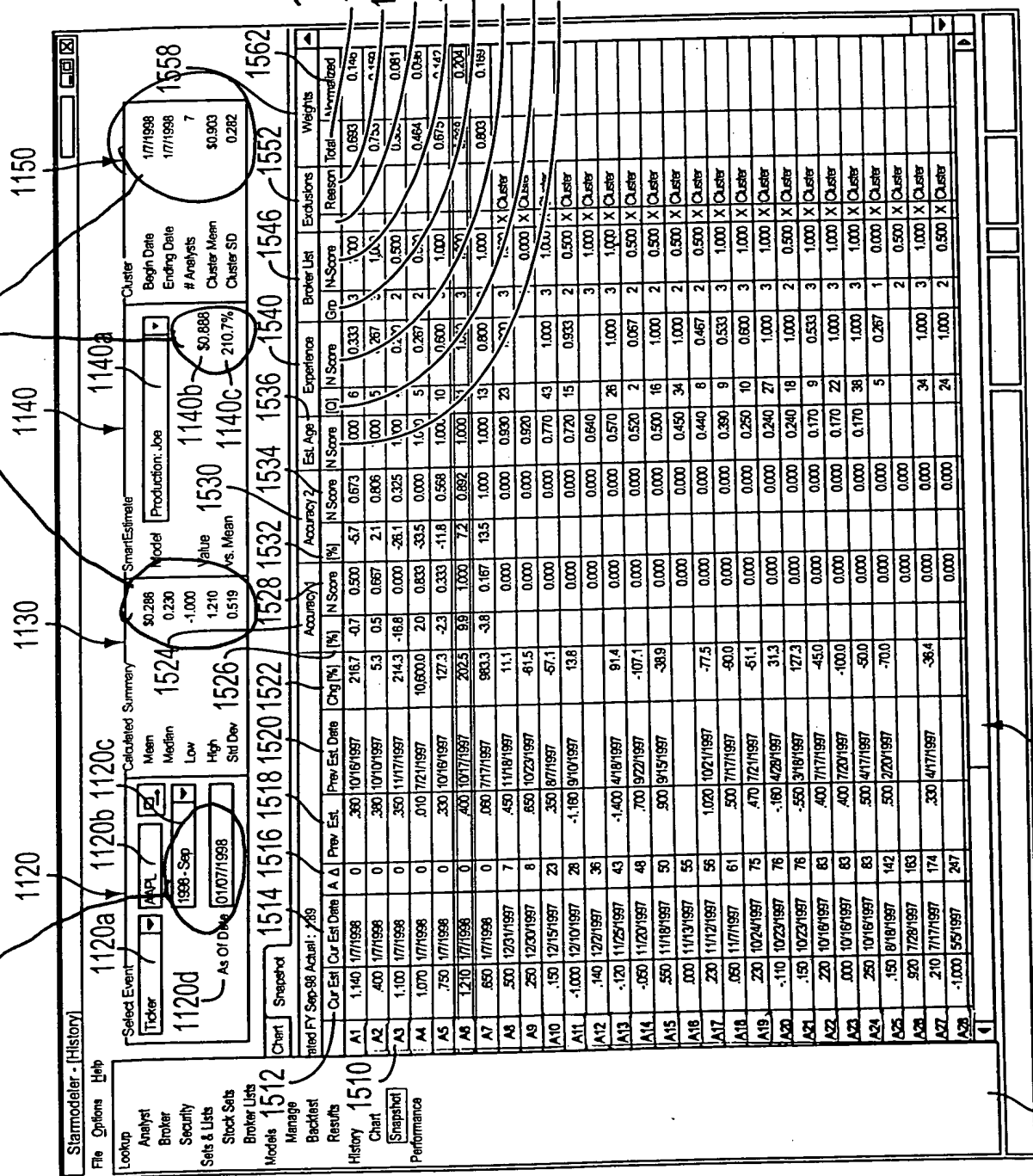
**Customer No. 00909**

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DATES AMENDED INFORMATION AMENDED



Information included in FIG. 12 as originally filed, but not included in previously submitted Formal Drawing for FIG. 12.

FIG. 12

CAPTION AMENDED

2110 2120

StarModeler

File Options Help

Lookup Analyst Broker Security Sets & Lists Stock Sets Broker Lists Models (Manage) Backtest Results History Chart Snapshot Performance

Name Copy Save Move Delete

Model Name: Joe

General Accuracy 1 Accuracy 2 All Star Broker List Experience Estimate Age

2170 2172 2174 2176 2178 2180 2182

2130

Factor Weights

Accuracy 1: 40(19.51%)

Accuracy 2: 60(29.27%)

All Star: 0(0.00%)

Broker List: 35(17.07%)

Experience: 35(17.07%)

Estimate Age: 35(17.07%)

2150

Exclusions

☒ Exclude estimates older than 100 days old.

☐ Exclude estimates more than 2.5 standard deviations from the mean.

☒ Attempt to detect most recent cluster. Exclude all estimates prior to this point.

Cluster Definition

Adjacent estimates have a difference of no more than 3 days.

Estimates are revised in same direction by at least 5 percent

☐ Fixed number of analysts: at least 4 analysts

☐ Variable number of analysts

Require 2 analysts when # of analysts is between 2 and 4

Require 3 analysts when # of analysts is between 5 and 8

Require 4 analysts when # of analysts is between 9 and 20

Require 20% of analysts when followed by 21 or more analysts.

2140

2160

210

Information Amended

Information added or amended.

Information included and amended.

Graphic included

2160

FIG. 13

210

CAPTION  
AMENDED

2110 2172 2174 2210

Starmodeler

File Options Help

Lookup Analyst Broker Security Sets & Lists Stock Sets Broker Lists Models (Manage) Backtest Results History Chart Snapshot Performance

Name Copy Save Move Delete JOB

Starmodeler Accuracy Q8/4 Accuracy Y3/1 Basic Cluster Cluster 4A 3D 2% Same Cluster Accuracy Q8/4 Cluster Accuracy Y3/1 DEFAULT II All Star Recency 90 Constant Recency 90 Proportional Research

Accuracy 1 Accuracy 2 All Star Broker List Experience Estimate Age

Calculate each analyst's average Relative Err %

Using prior 3 fiscal years Require 2 periods

For estimates made 3 to 12 months prior to the report date.

Assign N-Score

By Error Score By Error Rank Equally To Top...

To

All Analysts Only Top 6

Information included or Amended

Graphic Included.

Information Amended

210 2160

FIG. 14

2110

2176

Starmodeler - [Broker]

File Options Help

Lookup

Analyst

Broker

Security

Sets & Lists

Stock Sets

Broker Lists

Models

Manage

Backtest

Results

History

Chart

Snapshot

Performance

Name

Copy

Save

Move

Delete

Job

Starline

Accuracy Q8/4

Accuracy Y3/1

Basic Cluster

Cluster 4A 3D 2% Same

Cluster Accuracy Q8/4

Cluster Accuracy Y3/1

DEFAULT

It All Star

Recency 90 Constant

Recency 90 Proportional

Research

accu2y/ftk

accu4y/ftk

Chart330s-120c

Chart330s-120c

cluster235,100d/ftk

cluster435,100d/ftk

cluster635,100d/ftk

exper8y/ftk

Joe-AccOnly

Joe-ChartOnly

Mozes-120c

New Model

Rec100p

Rec30p

Rec50p

Production

Log

General

Accuracy 1

Accuracy 2

All Star

Broker List

Experience

Estimate Age

All Star Determination

☒ Analyst was ever in U.I.

☐ Analyst was in U.I. All Star in the previous year

All Star N-Score

All Star N-Score

Non All Star N-Score

2310

2320

Information Amended

Graphic Amended

Labels Amended

Graphic Included

Information Amended and Included.

FIG. 15

210

2160

2510

2520

2530

StarModeler - [Broker List]

File Options Help

Lookup Analyst Broker Security Sets & Lists Stock Sets [Broker Lists] Models Manage Backtest Results History Chart Snapshot Performance

Name Save Rename Copy Delete

Broker List

Joe

Group #3 N-Score 1.0000

Find Broker

Group #2 N-Score 0.5000

Find Broker

Group #1 N-Score 0.0000

Find Broker

Labels Amended

Broker Name # Analysts

Merrill Lynch	688
Salomon Smith Barney Inc	422
Lehman Brothers	398
Value Casa De Bolsa	339
Credit Suisse First Boston Corporation	336
Morgan Stanley, Dean Witter Discover	335
Goldman Sachs & Co	285
Salomon Brothers	283
Paine Webber Incorporated	270
Nasdaq Bureau LLC	261

Broker Name # Analysts

Morton Research	1
NOVA RESEARCH	1
Nativity Investments, Inc.	8
Naterra Capital	1
National Bank Financial	105
National Securities Corporation	4
Natwest - Adv Research	26
Nbd Bank, Na	22
Ncb Stockbrokers Ltd.	3
Needham & Company	80
Neldiger/Tucker/Burner, Inc.	9
Nesbitt	28
Nesbitt Burns Inc.	100
Nasdaq	International

Broker Name # Analysts

Advest Inc.	71
Argus Research Corp.	145
Dirty Dozen Research: No Agenda	1
Fifth Third/Ohio Company	30
Fourteen Research Corp.	18
Preferred Capital Markets	12
Standard & Poor Corp	275
Techwest, Lc	1
The Volume Investor	5
Unidentified Broker	1

Broker Name # Analysts

Advest Inc.	71
Argus Research Corp.	145
Dirty Dozen Research: No Agenda	1
Fifth Third/Ohio Company	30
Fourteen Research Corp.	18
Preferred Capital Markets	12
Standard & Poor Corp	275
Techwest, Lc	1
The Volume Investor	5
Unidentified Broker	1

Broker Names and  
" # Analysts "  
added and  
amended.

FIG. 16

2160

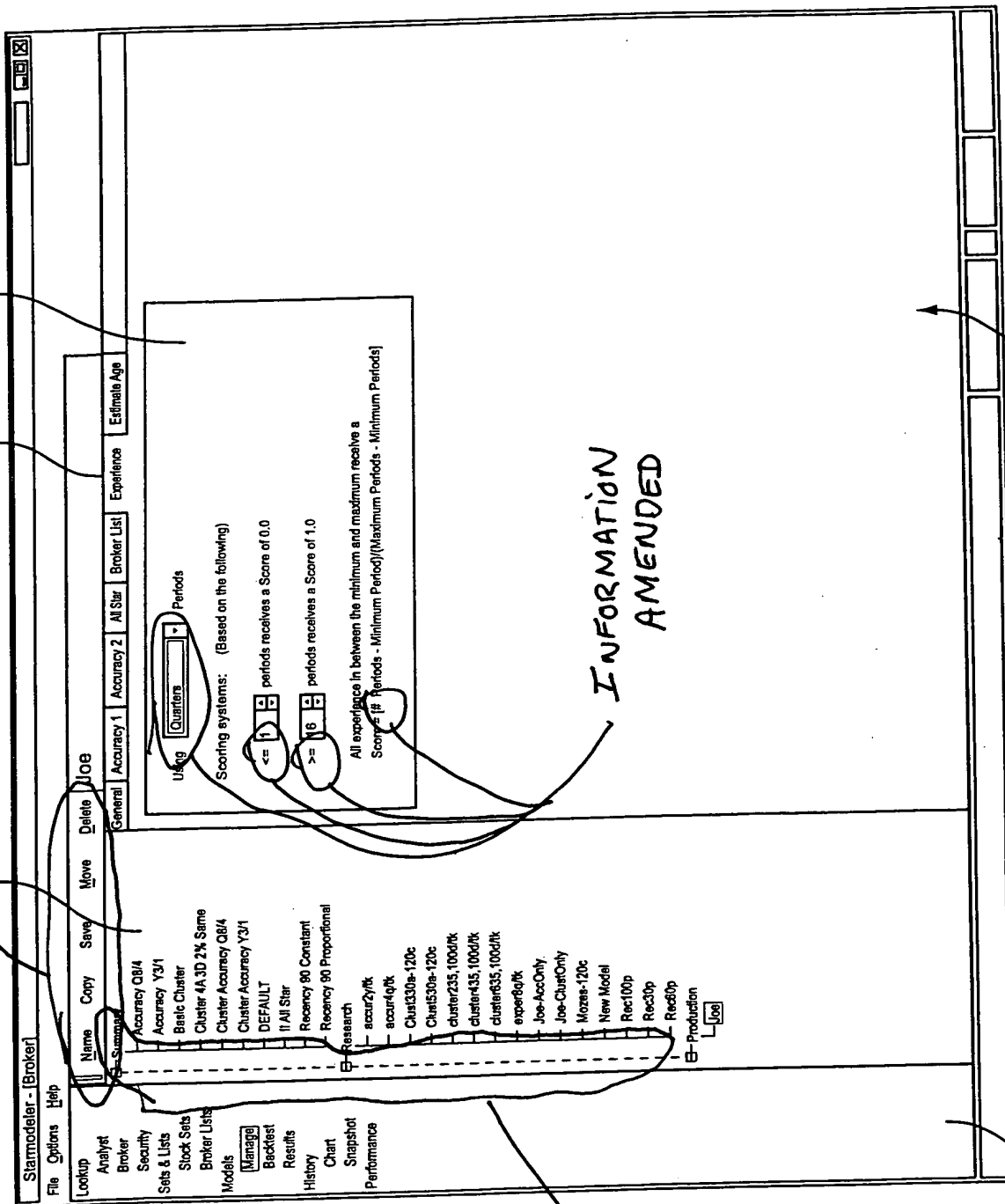
210

CAPTION  
AMENDED

2180

2110

2610



INFORMATION  
AMENDED

Graphic  
Included

FIG. 17

2160

210

CAPTION  
AMENDED

2132 2710

2110

SlamModeler - [Broker]

File Options Help

Lookup Analyst Broker Security Sets & Lists Stock Sets Broker Lists Models [Manage] Backtest Results History Chart Snapshot Performance

Name Copy Save Move Delete Job

General Accuracy 1 Accuracy 2 AI Star Broker List Experience Estimate Age

Age-weighting ☒ Constant ☐ Proportional

Cutoff: 100 days

Accuracy Q8/4  
Accuracy Y3/1  
Basic Cluster  
Cluster 4A 3D 2% Same  
Cluster Accuracy Q8/4  
Cluster Accuracy Y3/1  
DEFAULT  
II All Star  
Recency 90 Constant  
Recency 90 Proportional  
Research  
- accur2/1tk  
- accur4/1tk  
- Clust330a-120c  
- Clust330a-120c  
- Clust235-100d/1tk  
- Clust435-100d/1tk  
- Clust635-100d/1tk  
- exper8/1tk  
- Joe-AccOnly  
- Joe-ClustOnly  
- Mozes-120c  
- New Model  
- Rec100p  
- Rec30p  
- Rec60p  
- Production

Use

Information  
Included

Graphic  
Included

FIG. 18

2160

210



Information Amended.

DATES AMENDED

Info. added and amended.

1150

1140

1130

1120

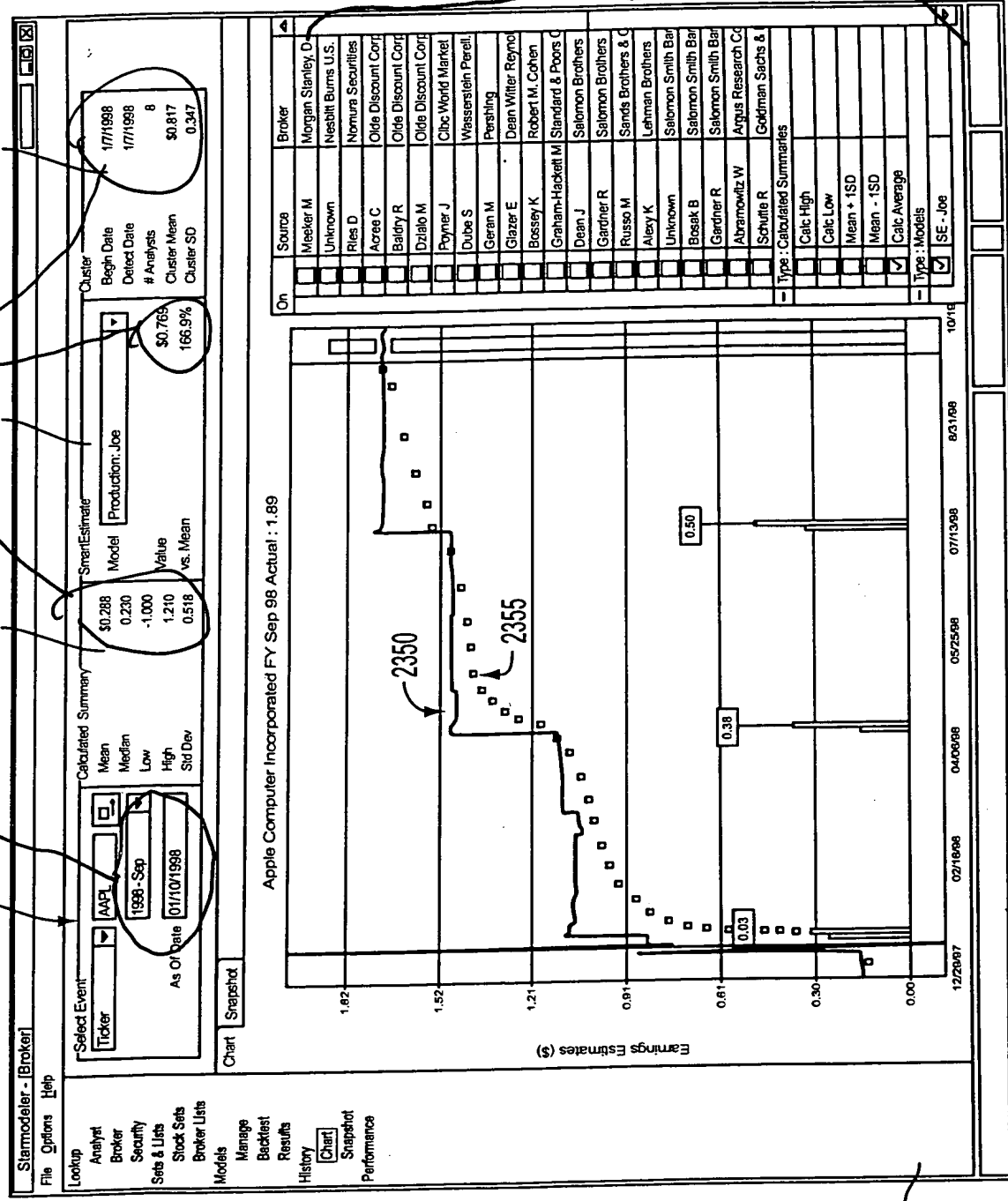


FIG. 23